IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8646 OF 2004

Shri Shetakari Taluka Kharedi Vikri
Sanstha Maryadeet & Anr. ..Petitioners.

Versus

Annaso Shankarrao Yadav ..Respondent.

Mr. P.D. Dalvi for the Petitioners.

Mr. S.V. Sadavarte for Respondent.

CORAM : S. A. BOBDE, J.

DATED : 27TH JUNE, 2005.

P.C.:

. Rule. Rule made returnable forthwith. Heard by consent.

2. The petitioner challenges the refusal of the Appellate Court to frame the issue proposed by him. He is the defendant in the suit.

3. According to the defendant the entire

structure including the Gala in question is constructed by him on the suit land, officially from the funds of its members and later on it has come to the ownership of the co-operative society. He, therefore, applied for framing of the following issues :-

1. Whether plaintiff proves that constructed building was leased to the defendant No.1 ?.

2. Whether plaintiff proves that he has constructed the building of said property ?.

This application has been rejected on the ground of erroneous observations as follows :-

> Admittedly, the plaintiff is the owner of land of suit premises. So he is presumed to be the owner of the building of on the land of suit premises. Therefore, the plaintiff cannot be called to prove the fact of construction of building as prayed by the defendant. So the aforesaid proposed issues are not necessary for the decision of the suit.

4. In India it is settled that dual ownership of a land and building is possible and therefore, the Appellate court ought to have permitted the framing of additional issues. The appellate court was, therefore, wrong in rejecting Exh. 26. In the circumstances, Exh. 26 is allowed. The appellate court shall decide the said issues. Parties shall be at liberty to adduce such additional evidence as may be advised.

.....